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Of Attorneys for Plaintiff, Morgan Stanley Smith  
Barney

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**MORGAN STANLEY SMITH  
BARNEY, LLC,**

vs.

**GREG PATRICK ERWIN,  
TAMARA L. HUMPHRIES, ALAN R.  
REXIUS, and KING B. MARTIN,**

Defendants.

Case No. 3:10-cv-01163-MO

**TEMPORARY RESTRAINING ORDER**

**ORDER**

Having heard the parties on the 27<sup>th</sup> day of September, 2010, upon consideration of the Complaint and Emergency Motion of Plaintiff Morgan Stanley Smith Barney ("MSSB"), and all submissions of record in this case by plaintiff and defendants, and having heard oral argument of

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counsel for plaintiffs and defendants, and having conducted a further hearing on September 29, 2010, and having determined that:

1. Under Rule 13804 of the Financial Industry Regulatory Authority ("FINRA") Code of Arbitration Procedure, MSSB has the express right to seek temporary injunctive relief from a court of competent jurisdiction pending an arbitration hearing before a panel of duly-appointed FINRA arbitrators, and

2. MSSB has demonstrated a substantial likelihood of success on the merits of its claims, insofar as temporary relief is granted as described below, IT IS HEREBY

**ORDERED AND DECREED THAT:**

Defendants are immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, including any officer, agent, employee, and/or representative of Defendants' new employer Sapient, until hearing and thereafter until further Order of this Court:

(1) Except for the clients on the "client list" marked as Exhibit 101 at the September 29, 2010 hearing, Defendants are prohibited from soliciting or otherwise initiating any further contact or communication with any client of MSSB whom Defendants served or whose name became known to Defendants while in the employ of MSSB for the purpose of advising said clients of Defendants' new affiliation, or for the purpose of inviting, encouraging or requesting the transfer of any accounts or business patronage from MSSB (excluding Defendants' family and relatives);

(2) Defendants, and all those acting in concert or participation with Defendants, specifically including any agent, employee, officer or representative of Defendants' new employer Sapient, are further ordered to return to MSSB within forty-eight (48) hours of September 27, 2010, any and all records, documents and/or other types of information pertaining to the clients or business of MSSB, except that Defendants may retain the five data points of information permitted by Protocol on Broker Recruiting only for those clients who were named on the "client list" provided to MSSB on September 22, 2010, and the information ordered to be

returned includes but is not limited to information about customers ("Customer Information"), whether in original, copied, handwritten, computerized, digitized (including computer software, disks, computer hard drive and/ or any other type of computer or digital information storage device) or memorialized in any other form, and all copies of such documents shall also be returned;

(3) Defendants are prohibited from destroying, erasing, or otherwise making unavailable for further proceedings in this matter, or in any arbitration proceeding between the parties, any records or documents (including data or information maintained in computer media) in Defendants' possession or control which were obtained from or contain information derived from any MSSB records, which pertain to MSSB clients whom Defendants served or whose names became known to Defendant while employed by MSSB, or which relate to any of the events alleged in the Complaint in this action;

(4) MSSB shall provide immediately to defendants' attorney Sean M. Driscoll a copy of the "client list" provided to MSSB by defendants on September 22, 2010;

(5) This Order shall be deemed to have been in effect since 4:00 p.m. on September 27, 2010, when first issued verbally by this Court;

(6) The Court's Order shall remain in full force and effect until such a time as either a FINRA arbitration panel renders a final decision on MSSB's request for injunctive relief, or this Court specifically orders otherwise; and

(7) Pending a preliminary injunction hearing before this Court, and pursuant to the requirements of sections 3 and 4 of the Federal Arbitration Act, 9 U.S.C §§3-4, the parties are directed to proceed expeditiously with an arbitration pursuant to Rule 13804 of the FINRA Procedure.

DATED this 6 day of October, 2010.

  
The Honorable Michael W. Mosman  
UNITED STATES DISTRICT COURT JUDGE

SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Thomas V. Dulcich

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Of Attorneys for Plaintiff, Morgan Stanley Smith Barney, LLC

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